

116TH CONGRESS  
1ST SESSION

# S. 663

To clarify the status and enhance the effectiveness of immigration courts,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 5, 2019

Ms. HIRONO (for herself, Ms. HARRIS, Mr. SANDERS, Ms. CORTEZ MASTO, Mrs. GILLIBRAND, Ms. KLOBUCHAR, Ms. SMITH, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To clarify the status and enhance the effectiveness of  
immigration courts, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Immigration Court Im-  
5       provement Act of 2019”.

6       **SEC. 2. FINDING; SENSE OF CONGRESS.**

7       (a) FINDING.—Congress finds that the United States  
8       tradition as a nation of laws and a nation of immigrants  
9       is best served by effective, fair, and impartial immigration

1 judges who have decisional independence and are free  
 2 from political influence.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
 4 gress that—

5 (1) immigration judges—

6 (A) should be fair and impartial; and

7 (B) should have decisional independence  
 8 that is free from political pressure or influence;  
 9 and

10 (2) in order to promote even-handed, non-bi-  
 11 ased, decision-making that is representative of the  
 12 public at large, immigration judges should be se-  
 13 lected from a broad pool of candidates with a variety  
 14 of legal experience, such as law professors, private  
 15 practitioners, representatives of pro bono service and  
 16 other nongovernmental organizations, military offi-  
 17 cers, and government employees.

18 **SEC. 3. PROFESSIONAL TREATMENT OF IMMIGRATION**  
 19 **JUDGES.**

20 (a) DEFINED TERM.—Section 101(b)(4) of the Im-  
 21 migration and Nationality Act (8 U.S.C. 1101(b)(4)) is  
 22 amended to read as follows:

23 “(4)(A) The term ‘immigration judge’ means an at-  
 24 torney who—

1           “(i) has been appointed by the Attorney Gen-  
2           eral to serve as a United States immigration judge;  
3           and

4           “(ii) is qualified to conduct proceedings under  
5           this Act, including removal proceedings under sec-  
6           tion 240.

7           “(B) An immigration judge shall be subject to such  
8           supervision and shall perform such duties as the Attorney  
9           General shall prescribe as long as such supervision does  
10          not interfere with the immigration judge’s exercise of inde-  
11          pendent decision-making authority over cases in which he  
12          or she presides.

13          “(C) An immigration judge shall be an attorney at  
14          the time of his or her appointment by the Attorney Gen-  
15          eral and shall maintain good standing or appropriate judi-  
16          cial status (as defined solely by the licensing jurisdiction)  
17          with the bar of the highest court of any State.

18          “(D) The service of an immigration judge is deemed  
19          to be judicial in nature. Actions taken by an immigration  
20          judge while serving in a judicial capacity shall be reviewed  
21          under the applicable Code of Judicial Conduct. Immigra-  
22          tion judges shall not be subject to any code of attorney  
23          behavior for conduct or actions taken while performing du-  
24          ties as an immigration judge.

1       “(E) An immigration judge may not be disciplined  
 2 for any good faith legal decisions made in the course of  
 3 hearing and deciding cases. Criticism of an immigration  
 4 judge, in a decision of any appellate court may not be con-  
 5 sidered or construed as a finding of misconduct.”.

6       (b) PERFORMANCE APPRAISALS.—Any system of  
 7 completion goals or other efficiency standards imposed on  
 8 immigration judges (as defined in section 101(b)(4) of the  
 9 Immigration and Nationality Act)—

10           (1) may be used solely as management tools for  
 11 obtaining or allocating resources; and

12           (2) may not be used—

13               (A) to limit the independent authority of  
 14 immigration judges to fulfill their duties; or

15               (B) as a reflection of individual judicial  
 16 performance.

17       (c) JUDICIAL COMPLAINT PROCESS.—Not later than  
 18 180 days after the date of the enactment of this Act, the  
 19 Attorney General shall establish a transparent judicial  
 20 complaint process that is consistent with—

21           (1) the Guidelines for the Evaluation of Judi-  
 22 cial Performance developed by the American Bar As-  
 23 sociation; and

1           (2) the judicial performance evaluation prin-  
2           ciples developed by the Institute for the Advance-  
3           ment of the American Legal System.

4           (d) ANNUAL LEAVE.—Every immigration judge shall  
5           be presumed to have 15 years of Federal civilian service  
6           for the purpose of the accrual of annual leave.

7           (e) CONTINUING LEGAL EDUCATION.—

8           (1) IN GENERAL.—In addition to the training  
9           required under section 603(c) of the International  
10          Religious Freedom Act of 1998 (22 U.S.C. 6473(c)),  
11          the Attorney General shall provide immigration  
12          judges with—

13                (A) meaningful, ongoing training, includ-  
14                ing annual, in-person training, to maintain cur-  
15                rent knowledge of immigration cases, changes  
16                in the law and effective docketing practices; and

17                (B) time away from the bench to assimilate the knowledge gained through such training.  
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19

20          (2) SERVICE TO THE LEGAL PROFESSION.—Be-  
21          cause of the ethical duty owed by immigration  
22          judges to participate in continuing legal education,  
23          including teaching of law at institutions of higher  
24          learning and other activities to educate the public  
25          and to improve the legal profession, the Attorney

1 General may not prevent or interfere with the par-  
 2 ticipation of an immigration judge in any such bona  
 3 fide activities if—

4 (A) undertaken in conjunction with an es-  
 5 tablished university, law school, bar association,  
 6 or legal organization; and

7 (B) the immigration judge clearly indicates  
 8 that such participation is in his or her personal  
 9 capacity and does not reflect any official posi-  
 10 tions or policies.

11 (f) CONTEMPT AUTHORITY.—

12 (1) RULEMAKING.—

13 (A) INTERIM REGULATIONS.—Not later  
 14 than 60 days after the date of the enactment of  
 15 this Act, the Attorney General shall promulgate  
 16 interim regulations governing the exercise of  
 17 the authority given to immigration judges under  
 18 section 240(b)(1) of the Immigration and Na-  
 19 tionality Act (8 U.S.C. 1229a(b)(1)) to sanction  
 20 contempt of an immigration judge’s exercise of  
 21 authority under such Act.

22 (B) FINAL REGULATIONS.—Not later than  
 23 180 days after the date of the enactment of this  
 24 Act, the Attorney General shall promulgate

1 final regulations governing the authority de-  
2 scribed in subparagraph (A).

3 (2) EFFECT OF FAILURE TO PROMULGATE REG-  
4 ULATIONS.—If the Attorney General fails to comply  
5 with subparagraph (1)(B), immigration judges  
6 shall—

7 (A) make appropriate findings of con-  
8 tempt; and

9 (B) submit such findings to the United  
10 States District Court for the judicial district in  
11 which the immigration judge is physically lo-  
12 cated.

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